

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

99-E-0410

IN THE MATTER OF THE LIQUIDATION OF
TUFTS HEALTH PLAN OF NEW ENGLAND, INC.

**ORDER APPROVING PLAN OF LIQUIDATION,
FUNDING AND SETTLEMENT AGREEMENT, AND RELATED
AGREEMENTS AND DOCUMENTS**

On the Court's consideration of the Motion of Paula T. Rogers, Commissioner of Insurance, as Liquidator of Tufts Health Plan of New England, Inc. ("TNE"), for approval of a Plan of Liquidation (the "Plan of Liquidation"), Funding and Settlement Agreement and all documents and agreements submitted in relation thereto (including certain responses and objections filed), and after hearing, it is hereby ORDERED, ADJUDGED and DECREED:

1. Based upon the Affidavit presented with the Liquidator's Motion for Approval of the Plan of Liquidation and the offers of proof made at the hearing, the Court finds that:

A. TNE is a for-profit corporation organized and existing under the laws of the State of New Hampshire, and is licensed as a health maintenance organization under the laws of New Hampshire.

B. TNE was placed in liquidation pursuant to an Order of this Court dated January 3, 2000, when this Court entered the Order of Liquidation because TNE was unable to continue as a viable business enterprise or health maintenance organization.

C. Thereafter, the Liquidator undertook actions to marshal and recover all of the assets or potential assets of the estate of TNE, including without limitation potential claims against TNE's parent and affiliated corporations, including Tufts Associated Health Plan, Inc., Tufts Associated Health Maintenance Organization, Inc., TAHMO Holdings, Inc., certain individual directors and officers of TNE and its parent and affiliated corporations, and others.

D. To that end, on or about March 31, 2000, the Liquidator commenced a civil action in this Court entitled Paula T. Rogers, as Liquidator vs. Tufts Health Plan of New England, Inc., Tufts Associated Health Plan, Inc., Tufts Associated Health Maintenance Organization, Inc., and others, Docket No. 00-C-170 ("the Liquidator's Action"), on behalf of creditors, policyholders and others, alleging in substance that Tufts Associated Health Plan, Inc., Tufts Associated Health Maintenance Organization, Inc., and other related and affiliated companies and individuals were and are legally and properly responsible for the obligations of TNE .

E. Rather than engage in a course of protracted and expensive litigation over the various issues posed by the Liquidator's Action and other actions which the Liquidator might have asserted against the defendants in the Liquidator's Action, the Liquidator and Tufts Associated Health Plan, Inc., Tufts Associated Health Maintenance Organization, Inc., and other related and affiliated companies (hereinafter, "THP") entered into a Funding and Settlement Agreement dated November 14, 2000 ("the Funding and Settlement Agreement"), which, in relevant part, provides for the Plan of Liquidation which is annexed to this Order. The Funding and Settlement Agreement avoids the need for the Liquidator to engage in a course of protracted and expensive

litigation with THP, which would itself result in substantial additional administration costs being incurred by the estate of TNE, with no assurances of the timing or results given the uncertainties of litigation.

2. Based upon the foregoing, the Plan of Liquidation, the materials submitted in connection with the Plan Approval Motion (including but not limited to the affidavit of the Liquidator), the Funding and Settlement Agreement between the Liquidator and THP, and Exhibit A thereto (the Settlement Agreement and Releases between the Liquidator and Bath Iron Works Corporation), and having considered the arguments of counsel and the evidence presented, the Court concludes that:

A. The Plan of Liquidation, incorporating and implementing the terms of the Funding and Settlement Agreement, including without limitation, the resolution of the Liquidator's Action and all other claims which the Liquidator might have asserted against THP, with prejudice, in accordance with the terms and conditions of the Settlement Agreement and the Releases between and among the Liquidator, THP and Bath Iron Works Corporation is in the best interest of the members, providers, creditors and other claimants of TNE.

B. The Funding and Settlement Agreement and the Plan of Liquidation avoid the prospect and uncertainty of litigation, and provide for effective, expeditious treatment and payment of the claims made by members, providers, creditors and other claimants of TNE in Classes One through Five, as set forth in R.S.A. 402-C:44 (I)-(V), which sets forth the statutory priority of distribution of claims allowed against the estate of TNE. Accordingly, the Funding and Settlement Agreement and the Plan of Liquidation are in the best interests of the members, providers, creditors and other claimants of TNE.

C. The Liquidator has provided full and adequate notice of the actions she has taken in this Liquidation Proceeding. The July 10, 2000 bar date for the filing of Proofs of Claims against TNE was reasonable and established in conformity with applicable statutory requirements. Adequate notice of the hearing on approval of the Plan of Liquidation and the Funding and Settlement Agreement was also provided to all known holders of Claims against TNE. In addition, the provision in the Funding and Settlement of Agreement that any Claim evidenced by a Proof of Claim first filed more than thirty days after the Effective Date thereunder shall be deemed time barred and shall not participate in any dividends or distributions under the Plan of Liquidation is reasonable and is consistent with the purposes of RSA 402-C and the Liquidator's need to efficiently administer TNE's estate. Marilyn Shannon McConaghy, in her capacity as Director of the Rhode Island Department of Business Regulation, as successor Ancillary Receiver in Rhode Island of TNE (the "Ancillary Receiver") previously intervened in these proceedings and is subject to the jurisdiction of the Court. Moreover, the Ancillary Receiver is bound by the terms of the Plan which require her to turn over to the Liquidator funds held by her as Rhode Island Special Deposits to allow for the payment of the allowed Special Deposit Claims and to thereafter obtain what additional authority she needs from the Rhode Island courts to comply with section 2.3(C) of the Plan which provides for the Ancillary Receiver to wire transfer to the Liquidator any remaining balance of the Special Deposits. Such action avoids prejudice to the interests of all of TNE's members, creditors, subscribers and policyholders who have timely filed claims and it allows creditors to reap the benefits of the Funding and Settlement Agreement.

D. The Plan of Liquidation is fair and equitable, and does not discriminate unfairly among the holders of Claims against TNE. Accordingly, the objections and responses filed by certain creditors of the TNE estate are overruled.

3. The Funding and Settlement Agreement and the Plan of Liquidation, including all agreements and documents submitted in connection therewith, are therefore hereby APPROVED. The parties to the Funding and Settlement Agreement and its exhibits, as well as the Ancillary Receiver, shall fully comply with the terms and conditions thereof and their respective obligations thereunder. The Liquidator is hereby authorized to implement the Plan of Liquidation, including the execution of all documents necessary and attendant thereto, and the taking of all actions contemplated therein, without limitation. The THP Claims are Allowed Claims to be treated as contemplated by the Funding and Settlement Agreement (see Section 3.3 (F) of the Funding and Settlement Agreement). BIW's Claim is hereby allowed in the amount of \$14,337,135.75, against which the Liquidator is hereby authorized to set off the amount of \$337,135.75 in premium Claims, resulting in a net Allowed Claim of \$14,000,000, payable as an Allowed Class 2 Claim under the Plan of Liquidation. Unless otherwise defined in this Order, all capitalized terms in this Order shall have the meaning ascribed to them in the Plan of Liquidation and the Funding and Settlement Agreement.

4. The Liquidator shall pay and continue to pay all Administration Costs and other obligations of the estate of TNE in accordance with RSA 402-C:44, the Plan and the Funding and Settlement Agreement. Pursuant to the provisions of Section 3.3(C) of the Funding and Settlement Agreement and Exhibit B thereto, the written acceptance by a claimant of a compromise amount (the Pre-NOD Notice Procedure) prior to the issuance

to the claimant of a Notice of Determination shall be deemed to be a recommendation by the Liquidator of an Allowed Claim in such compromise amount and such Allowed Claim may be paid by the Liquidator. The Liquidator shall include in her periodic reports to the Court a list or print-out of (i) the names and addresses of each claimant who has accepted such compromise amount and (ii) the compromise amount accepted by such claimant.

5. In accordance with the terms and conditions of Section 2.5 of the Funding and Settlement Agreement, THP shall have standing to contest the allowance by the Liquidator of Claims allowed by the Liquidator and not agreed to by THP in the course of the Proof of Claim Process, as set forth in Section 3.3 of the Funding and Settlement Agreement.

6. The Liquidator is authorized to convey to TAHMO Holdings, Inc. one hundred percent of TNE's interest in Tufts Insurance Company, Inc. ("TICO"), pursuant to the terms of Section 2.2(B) of the Funding and Settlement Agreement. To the fullest extent allowed by law, such transfer shall be free and clear of all Claims of TNE creditors, and such creditors are hereby permanently enjoined from asserting any such Claims against TICO or THP.

7. Upon the Conclusion of Services, the Liquidator shall wire transfer the funds remaining in the TNE accounts to THP in respect of the THP Allowed Claims, less any reserves that shall be established upon petition to this Court for the winding up and closing of this estate. Any remaining portion of the reserves so established not used to pay Allowed Claims or Administration Costs upon the closing of this estate shall be wire

transferred to THP in respect of the THP Allowed Claims, to the extent that they remain unpaid, upon the entry of a Final Order discharging the Liquidator and closing this estate.

8. The Liquidator shall report to the Court at such time as the Conclusion of Services (as defined in the Funding and Settlement Agreement) shall occur. Such report shall be in the form of, or shall be annexed to, a pleading to be submitted to the Court.

9. A. All persons are hereby permanently enjoined and prohibited from recovering or attempting to recover any money or property in which TNE or its estate has or had any claim or interest other than under the terms of the Plan

B. Other than with respect to any Claim based upon an express guaranty by THP or any of the persons released by the Liquidator in connection with the Liquidator's Action in an agreement with any other person or entity, all persons are hereby permanently enjoined and prohibited from asserting any claims against THP or any persons released by the Liquidator in connection with the Liquidator's Action, and from attempting to recover any money or property from THP or any persons released by the Liquidator in connection with the Liquidator's Action in respect of such claims.

10. The Court shall retain exclusive jurisdiction to enforce the provisions of this Order and the Plan of Liquidation, and all of the agreements attendant thereto or incorporated therein by reference, and to insure that the intent and purposes of the Plan of Liquidation are carried out and given effect. Without limiting the generality of the foregoing, the Court shall retain exclusive jurisdiction for the following purposes:

A. To consider any modification or amendment to the Plan of Liquidation (including any of the agreements contemplated by, incorporated into, or attendant to the Plan of Liquidation); and

B. To hear and determine:

- i. All controversies, suits and disputes, if any, as may arise in connection with the Proof of Claim Process or under any of the agreements contemplated by, incorporated into, or attendant to the Plan of Liquidation, until entry of an Order terminating this Liquidation Proceeding;
- ii. All controversies, suits and disputes, if any, as may arise in connection with the interpretation or enforcement of the Plan of Liquidation, the Funding and Settlement Agreement (including the THP Guaranty), the Deposit, the Settlement Agreement and Release between the Liquidator and Bath Iron Works Corporation, or this Order; and,
- iii. All proceedings to enforce performance of the Plan of Liquidation and this Order against any person, including without limitation, proceedings seeking injunctive relief in aid of compliance with this Order, the Plan of Liquidation and any of the agreements contemplated by, incorporated into, or attendant to the Plan of Liquidation.

11. Any Claim evidenced by a Proof of Claim first filed against TNE more than thirty days after the Effective Date of the Plan of Liquidation is hereby deemed to be prejudicial to the orderly and efficient administration of TNE's estate and to the interests of holders of Claims against TNE timely filed or amended in accordance with the Plan of

Liquidation and the Funding and Settlement Agreement, and the Court shall disallow any such Claim upon notice thereof.

12. This order constitutes a final decision on the merits.

SO ORDERED.

Dated: _____, 2000
